

9/16/2022

UNITED STATES v DONVIE S EDDINGTON OR  
CIVIL NO: 22-2001-DWD  
CRIM NO: 21-30006-DWD

RE: FILING OF BRIEF, IE 28 USC 2255

DEAR CLERK:

PURSUANT TO (AN) ORDER TO AMEND  
MOTION TO VACATE, SET ASIDE OR CORRECT  
SENTENCE UNDER 28 USC 2255, DATED  
9/7/2022, PLEASE FIND ENCLOSED FOR  
FILING, MEMORANDUM OF LAW IN SUPPORT,  
REQUEST FOR THE APPOINTMENT OF COUNSEL;  
REQUEST FOR EVIDENTIARY HEARING WITH A  
CERTIFICATE OF SERVICE.

AS A PROFESSIONAL COURTESY, MAY I  
PLEASE BE AFFORDED WITH A COPY OF THIS  
FILING, ALONG WITH MY DOCKET TEXT SHEET.  
THANK YOU FOR THIS CONSIDERATION.

SINCERELY,

/s/ Donvie Eddington  
DONVIE S EDDINGTON OR

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS

DONVIE S EDDINGTON, JR  
MOVANT,

V

CIVIL NO: 22-2001

UNITED STATES OF AMERICA,  
RESPONDENT.

MOVANT'S MEMORANDUM OF LAW  
IN SUPPORT OF HIS APPLICATION/  
PETITION UNDER 28 USC 2255

COMES NOW, DONVIE S EDDING-  
TON JR, PROCEEDING IN PRO SE, IN  
NECESSITY, PURSUANT TO HAINES v

KERNER, 404 US 519-520 (1972) BEFORE THIS HONORABLE COURT; HUMBLY AND RESPECTFULLY MOVES IT TO GRANT PETITIONER/MOVANT RELIEF PURSUANT TO 28 USC SEC 2255, TO VACATE, SET ASIDE AND CORRECT HIS SENTENCE.

IN THIS MEMORANDUM BRIEF IN SUPPORT, MOVANT AVERES THAT HE WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL, IN VIOLATION OF HIS 6<sup>TH</sup> AND 14<sup>TH</sup> AMENDMENT RIGHT(S).



THE SENTENCE IS UNCONSTITUTIONAL  
BECAUSE MOVANT DID NOT RECEIVE  
EFFECTIVE ASSISTANCE OF COUNSEL  
AS GUARANTEED BY THE SIXTH  
AMENDMENT OF THE US CONSTITUTION

CLAIMS OF INEFFECTIVE ASSIST-  
ANCE OF COUNSEL ARE GOVERNED BY  
THE SUPREME COURT'S DECISION IN  
STRICKLAND v WASHINGTON, 466 US  
668, 687-88, 694, 104 OCT 2052,  
2064-65, 2068, 80 LEd 2d 674 -  
(1984).

TO SUCCEED ON (ANY) CLAIM OF  
INEFFECTIVE ASSISTANCE OF COUNSEL,

A DEFENDANT MUST SHOW: (1) THE ATTORNEY'S REPRESENTATION FELL BELOW (A) AN OBJECTIVE STANDARD OF REASONABLENESS, AND (2) THERE IS A REASONABLE PROBABILITY THAT EXCEPT FOR THE ATTORNEY'S UNPROFESSIONAL ERROR (S), THE RESULT OF THE PROCEEDINGS WOULD HAVE BEEN DIFFERENT. SEE UNITED STATES V KING, 917 F2d 181, 183 (5TH CIR 1990) (CITING STRICKLAND, SUPRA).

IN THIS CASE AT BAR, ATTORNEY

DAVID L BRENGLER, COMMITTED SEVERAL UNPROFESSIONAL ERROR(S) AND OMISSIONS THAT AMOUNTED TO A PERFORMANCE BELOW (AN) OBJECTIVE STANDARD OF REASONABLENESS FOR COUNSEL IN A CRIMINAL CASE.

PETITIONER ASSERTS, THAT COUNSEL COMMITTED THE FOLLOWING ERROR(S) AND OMISSIONS:

COUNSEL WAS CONSTITUTIONALLY INEFFECTIVE FOR FAILING TO PERFECT MOVANT'S REQUESTED NOTICE OF APPEAL



MOVANT ASSERTS, THAT ATTORNEY DAVID L BRENGLE, PROVIDED CONSTITUTIONALLY INEFFECTIVE ASSISTANCE OF COUNSEL FOR: (1) FAILING TO FILE — MOVANT'S REQUESTED NOTICE OF APPEAL; AND (2) FAILING TO CONSULT WITH MOVANT AFTER SENTENCING CONCERNING HIS APPEAL. SEE GOMEZ-DIAZ V UNITED STATES, 433 F3d 788, 792 (11TH CIR 2005).

MOVANT CONTENDS, THAT SUCH UNPROFESSIONAL ERRORS AND OMISSIONS

BY COUNSEL CONSTITUTES INEFFECTIVE  
ASSISTANCE OF COUNSEL. SEE ROE V  
FLORES-ORTEGA, 528 US 470, 120  
SCT 1029, 145 LEd 2d 985 (2000).

THE SUPREME COURT IN FLORES-  
ORTEGA REAFFIRMED THE WELL  
SETTLED RULE, THAT (A)N ATTORNEY  
WHO FAILS TO FILE (A)N APPEAL  
ON THE BEHALF OF A CLIENT WHO  
SPECIFICALLY REQUESTS IT, ACTS IN  
A PROFESSIONABLE UNREASONABLE  
MANNER PER SE. ID AT 477, 120



SCT AT 1035 (CITING RODRIGUEZ V  
UNITED STATES, 395 US 327, 89 SOT  
1715, 23 LEd 2d 340 (1969)).

THE FLORES-ORTEGA COURT WENT  
ON TO HOLD THAT, EVEN IF A CLIENT  
HAS NOT MADE A SPECIFIC REQUEST  
OF HIS ATTORNEY TO FILE (AN) APPEAL  
A COURT MUST INQUIRE WHETHER  
THE ATTORNEY CONSULTED WITH THE  
CLIENT REGARDING THE ADVANTAGES  
AND DISADVANTAGES OF APPEALING  
AND MADE A REASONABLE EFFORT TO

TO DETERMINE THE CLIENT'S WISHES.

IF SO, THE ATTORNEY HAS ACTED UNREASONABLY IF HAS IGNORED THE CLIENT'S WISHES TO APPEAL THE CASE, AS IS THE CASE IN THIS INSTANCE.

IF NOT, THE COURT MUST FURTHER INQUIRE WHETHER THE ATTORNEY HAD THE AFFIRMATIVE DUTY TO CONSULT.

(AN ATTORNEY HAS THIS DUTY — WHEN EITHER (1) ANY RATIONAL DEFENDANT WOULD WANT TO APPEAL; OR (2) HIS PARTICULAR CLIENT REA-

SONABLY DEMONSTRATED WON INTEREST IN APPEALING.

MOVANT IN THIS ACTION, ADVISED MR BRENGLE, HIS ATTORNEY OF RECORD, THRU HIS CRIMINAL PROCEEDINGS THAT HE WISHED TO APPEAL.

AND COUNSEL IGNORED MOVANT'S REQUEST TO APPEAL.

PETITIONER HAS MEET THE CRITERIA OF FLORES - ORTEGA SUPRA

AS TO THE SECOND PRONG OF THE STRICKLAND TEST, THE FLORES-ORTEGA



COURT HELD, THAT FAILURE TO FILE  
CAN APPEAL THAT THE DEFENDANT  
WANTED FILED DENIED THE DEF-  
ENDANT HIS CONSTITUTIONAL RIGHT  
TO COUNSEL AT A CRITICAL STAGE.  
ID AT 483, 120 OCT AT 1038.

PETITIONER ARGUES, IN SUCH —  
CASES, PREJUDICE IS PRESUMED, BE-  
CAUSE RATHER THAN BEING DENIED  
THE OPPORTUNITY FOR A FAIR PRO-  
CEEDING, THE DEFENDANT IS DE-  
NIED THE OPPORTUNITY FOR A —

PROCEEDING AT ALL. ID (CITING SMITH v ROBBINS, 528 U.S. 259, 120 S.Ct. 746 (2000); PENDERSON v OHIO, 488 U.S. 75, 88-89, 109 S.Ct. 346 (1988); UNITED STATES v CRONIN, 466 U.S. 648, 104 S.Ct. 2039 (1984); AND GOMEZ-DIAZ v UNITED STATES, 433 F.3d 788, 792 (11th Cir. 2005)).

ACCORDINGLY, TO SATISFY THE PREJUDICE PRONG OF THE STRICKLAND TEST, A DEFENDANT WHO SHOWS THAT HIS ATTORNEY HAS IGNORED HIS

WISHES AND FAILED TO FILE (A)N  
APPEAL ON HIS BEHALF, NEED ONLY  
DEMONSTRATE THAT, BUT FOR THE AT-  
TORNEY DEFICIENT PERFORMANCE, HE  
WOULD HAVE APPEALED.

MOVANT IS ENTITLED TO (A)N OUT-  
OF-TIME APPEAL, REGARDLESS OF  
WHETHER HE CAN IDENTIFY (A)NY AR-  
GUABLE AND MERITORIOUS GROUND(S)  
FOR HIS APPEAL. SEE GOMEZ -  
DIAZ, 433 F 3d AT 793.

THIS COURT MUST GRANT (A)N



OUT OF TIME APPEAL OR CONDUCT (AN)  
EVIDENTIARY HEARING TO RESOLVE THE  
FACTUAL DISPUTE. SEE GOMEZ-DIAZ,  
433 F3d AT 794.

COUNSEL WAS INEFFECTIVE FOR  
FAILING TO CHALLENGE MOV-  
ANT'S BASE OFFENSE LEVEL  
PURSUANT TO USSC 2K2.1(a)(2)

MOVANT ARGUES THAT DEFENSE  
COUNSEL WAS INEFFECTIVE (F)OR  
FAILING TO OBJECT AND CHALLENGE  
HIS BASE OFFENSE LEVEL UNDER  
USSC 2K2.1(a)(2).

MOVANT MAINTAINS THAT THE BASE  
OFFENSE LEVEL TO WHICH HE WAS  
SUBSEQUENTLY SENTENCED UNDER 18  
IS INCORRECT.

MOVANT ARGUES, HAD ATTORNEY ON  
RECORD DAVID L BRENGLE, OBJECT-  
ED AND CHALLENGED THIS INACCURACY,  
MOVANT WOULD HAVE BEEN SENTENCED  
TO A MUCH LIGHTER SENTENCE.

MOVANT ARGUES, THAT THE MERE  
POSSESSION OF A HANDGUN, IN LIGHT  
OF THE SUPREME COURT RULING IN

REHAF V UNITED STATES, 136 SOT  
2191 (2019), CLEARLY STATES, THAT  
THE GOVERNMENT MUST PROVE BOTH  
THAT THE DEFENDANT KNEW HE  
BELONGED TO THE RELEVANT CATEG-  
ORY OF PERSONS BARRED FROM...  
POSSESSING A FIREARM AND THAT  
HE KNEW HE POSSESSED A FIREARM.

PROOF OF KNOWLEDGE OF STATUS  
IS NOW ESSENTIAL AND KEY

THUS, PREJUDICE HAS BEEN SHOWN  
UNDER STRICKLAND. SEE GLOVER V



UNITED STATES, 531 US 198, 203, 121

507 696 (2001); UNITED STATES v

CHASE, 499 F3d 1061, 1068 (9TH CIR

2007); ALANIZ v UNITED STATES,

351 F3d 365, 368 (8TH CIR 2003)

(CONCLUDING THAT AN ERROR IN -

CREATING A DEFENDANT'S SENTENCE

BY AS LITTLE AS (6) SIX MONTHS

CAN BE PREJUDICIAL WITHIN THE

MEANING OF STRICKLAND).

MOVANT ARGUES, PREJUDICE IS

SHOWN. NOTING US v QAZI 975 F3d 989

(9TH CIR 2020)

COUNSEL WAS INEFFECTIVE -  
FOR FAILING TO OBJECT AND  
CHALLENGE CRIMINAL HISTORY  
CALCULATION

COUNSEL PROVIDED CONSTITU-  
TIONALLY INEFFECTIVE ASSISTANCE  
WHEN FAILING TO OBJECT AND CHAL-  
LENGE CRIMINAL HISTORY CALCU-  
LATION.

MOVANT ARGUES, THAT BASED ON  
THE ADVICE OF HIS ATTORNEY, DAVID  
L BRENGLE, HE PLEAD GUILTY.

MOVANT HAD PREVIOUS CONVICT-

IONS FOR MARIJUANA. MARIJUANA  
IS LEGAL IN THE STATE OF MISS-  
OURI.

MOVANT HAD CONCERNS ABOUT  
HIS CRIMINAL HISTORY, AFTER HE  
READ HIS POR.

IN LIGHT OF TOWNSEND V BURKE,  
334 U.S. 736, 68 S.Ct. 1252 (1948)  
(RECOGNIZES, DUE PROCESS REQUIRES  
THAT A CONVICTED PERSON NOT BE  
SENTENCED ON "MATERIALLY UNTRUE"  
ASSUMPTIONS OR "MISINFORMATION".)



ID AT 741, 68 OCT 1255.

MOVANT ARGUES, THAT CONGR-  
ESS' INTEREST IN RELIABLE SEN-  
TENCING INFORMATION CAN CLEARLY  
BE DISCERNED IN THE VARIOUS  
AMENDMENTS TO FEDERAL RULE OF  
CRIMINAL PROCEDURE 32. SEE LEWIS v  
LANE, 382 F2d 1446 (CA 7 1987).

DEFENSE COUNSEL DEPRIVED MOV-  
ANT OF EFFECTIVE ASSISTANCE OF  
COUNSEL BE HE FAILED TO OBJECT  
AND CHALLENGE CRIMINAL HISTORY

AFTER MOVANT READ HIS PSR AND BROUGHT THE DISCREPANCY TO THE ATTENTION OF HIS ATTORNEY DAVID L BRENGLER.

AT THIS POINT MOVANT, WISHED TO WITHDRAW HIS PLEA, BUT WAS ADVISED BY COUNSEL THAT IT WAS TOO LATE TO DO SO. SEE UNITED STATES v SEGARRA-RIVERA, 473 F3d 381, 383 (1<sup>ST</sup> CIR 2007).

COUNSEL KNEW, THAT IF MOVANT FILED A MOTION TO WITHDRAW HIS

GUILTY PLEA, THAT HE WOULD BE FORCED TO DEFEND HIMSELF AGAINST A VALID CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL AND BAR COMPLAINT BECAUSE OF HIS... FAULTY AND ERRONEOUS LEGAL ADVICE AND SENTENCE INDUCEMENTS TO GET MOVANT TO PLEAD GUILTY.

SEE JEGARA-RIVERA, 473 F3d AT 383; UNITED STATES v COLON-TERRES, 382 F3d 76, 89 (1ST CIR 2004).

BECAUSE COUNSEL FAILED TO OB-



JECT AND CHALLENGE MOVANT'S CRIMINAL HISTORY CALCULATION, MOVANT ARGUES THAT HIS PLEA WAS (NOT KNOWINGLY AND VOLUNTARILY ENTERED AS A RESULT OF INEFFECTIVE ASSISTANCE OF COUNSEL AND MUST BE SET ASIDE. SEGGARA - RIVERA, SUPRA.

## CONCLUSION

WHEREFORE, BASED ON THE ABOVE, DONVIE S EDDINGTON, OR

RESPECTFULLY MOVES TO SET ASIDE  
HIS GUILTY PLEA AND AFFORD HIM  
(A)N OPPORTUNITY TO PLEAD A NEW.

ALTERNATIVELY, APPOINT COUNSEL PUR-  
SUANT 18 USC 3006A FOR APPELLATE  
PURPOSES, AFFORDING MOVANT (A)N  
OPPORTUNITY TO FILE A TIMELY NOT-  
ICE OF APPEAL THROUGH APPOINTED  
COUNSEL, IN LIGHT OF RULES 6 AND  
8 GOVERNING 2255 PROCEEDINGS.

RESPECTFULLY SUBMITTED ON:

9/16/2022. /s/ Donnie S Eddington  
DONNIE S EDDINGTON

## CERTIFICATE OF SERVICE

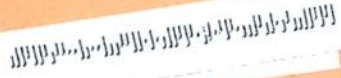
I, DONVIE S EDDINGTON SR, HEREBY  
CERTIFY THAT I SERVED A TRUE COPY  
OF THE FOLLOWING INSTRUMENT, ON THIS  
16<sup>TH</sup> DAY OF SEPT 2022, VIA U.S. MAIL,  
PURSUANT TO HOUSTON & LACK, 487  
UO 266 (1988), MAILED TO: CLERK,  
UO DIST CT, 750 MISSOURI AVE,  
E ST LOUIS, ILL 62201.

EXECUTED UNDER THE PENALTY OF  
PERJURY, PURSUANT 28 USC 1746.

10/ Donnie Eddington  
DONVIE S EDDINGTON SR



DONVIE S EDDINGTON SR  
REG #: 46394-044  
FCU RAYBROOK  
PO BOX 900  
RAYBROOK, NY 12977



CLERK, US DISTRICT COURT  
750 MISSOURI AVE  
EAST ST LOUIS, ILL 62201

MAIL CLEAR  
BY JAN 31 2023

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